

1 LEWIS BRISBOIS BISGAARD & SMITH LLP
2 MATTHEW S. PASCALE, SB# 168909
3 E-Mail: Matthew.Pascale@lewisbrisbois.com
4 SHEILA J. STARVISH, SB# 193106
5 E-Mail: Sheila.Starvish@lewisbrisbois.com
6 633 West 5th Street, Suite 4000
7 Los Angeles, California 90071
8 Telephone: 213.250.1800
9 Facsimile: 213.250.7900

10 Attorneys for Defendants SSC TARZANA MANAGEMENT COMPANY, LP
11 DBA TARZANA HEALTH AND REHABILITATION CENTER, a Delaware
12 corporation, and SSC TARZANA MANAGEMENT, GP LLC DBA TARZANA
13 HEALTH AND REHABILITATION CENTER, a Delaware corporation

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 YELIZAVETA POPERECHNAYA,
17 by and through her personal legal
18 representative ZHANNA
19 ZAGORUYKO; ZHANNA
20 ZAGORUYKO, individually,

21 Plaintiffs,

22 vs.

23 SSC TARZANA MANAGEMENT
24 COMPANY, LP DBA TARZANA
25 HEALTH AND REHABILITATION
26 CENTER, a Delaware corporation, SSC
27 TARZANA MANAGEMENT, GP LLC
28 DBA TARZANA HEALTH AND
REHABILITATION CENTER, a
Delaware corporation, and DOÉS 1-
100, inclusive,

Defendants.

CASE NO.

NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §1441(b)
(DIVERSITY)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendants SSC TARZANA MANAGEMENT
COMPANY, LP DBA TARZANA HEALTH AND REHABILITATION CENTER,
a Delaware corporation, and SSC TARZANA MANAGEMENT, GP LLC DBA

1 TARZANA HEALTH AND REHABILITATION CENTER, a Delaware
2 corporation, hereby removes to this Court the State Court action described below,
3 pursuant to the provisions of 28 U.S.C. §1446 on the basis of diversity of citizenship
4 pursuant to 28 U.S.C. §1441(b) as follows:

5 1. On October 24, 2014, an action was commenced in the Superior Court
6 of the State of California in and for the County of Los Angeles entitled
7 YELIZAVETA POPERECHNAYA, by and through her personal legal
8 representative ZHANNA ZAGORUYKO; ZHANNA ZAGORUYKO, individually,
9 vs. SSC TARZANA MANAGEMENT COMPANY, LP DBA TARZANA
10 HEALTH AND REHABILITATION CENTER, a Delaware corporation, SSC
11 TARZANA MANAGEMENT, GP LLC DBA TARZANA HEALTH AND
12 REHABILITATION CENTER, a Delaware corporation, and DOES 1-100,
13 inclusive, Case No. LC 102280. A copy of the Complaint is attached hereto as
14 Exhibit "A".

15 2. The first date upon which defendants SSC TARZANA
16 MANAGEMENT COMPANY, LP DBA TARZANA HEALTH AND
17 REHABILITATION CENTER, a Delaware corporation, and SSC TARZANA
18 MANAGEMENT, GP LLC DBA TARZANA HEALTH AND REHABILITATION
19 CENTER, a Delaware corporation, received notice of and a copy of the said
20 Complaint was November 7, 2014 when defendants SSC TARZANA
21 MANAGEMENT COMPANY, LP DBA TARZANA HEALTH AND
22 REHABILITATION CENTER, a Delaware corporation, and SSC TARZANA
23 MANAGEMENT, GP LLC DBA TARZANA HEALTH AND REHABILITATION
24 CENTER, a Delaware corporation, were served with a copy of the said Complaint
25 and a Summons from the said state court. A copy of the Summons served on
26 defendants SSC TARZANA MANAGEMENT COMPANY, LP DBA TARZANA
27 HEALTH AND REHABILITATION CENTER, a Delaware corporation, and SSC
28 TARZANA MANAGEMENT, GP LLC DBA TARZANA HEALTH AND

1 REHABILITATION CENTER, a Delaware corporation, is attached hereto as
2 Exhibit "B".

3 3. SSC TARZANA MANAGEMENT COMPANY, LP DBA TARZANA
4 HEALTH AND REHABILITATION CENTER, a Delaware corporation, and SSC
5 TARZANA MANAGEMENT, GP LLC DBA TARZANA HEALTH AND
6 REHABILITATION CENTER, a Delaware corporation, are informed and believe
7 that plaintiff ZHANNA ZAGORUYKO individually and as the personal legal
8 representative of YELIZAVETA POPERECHNAYA was, at the time of the filing
9 of this action, and still is a citizen of the United States and a domiciliary of the state
10 of California.

11 4. SSC TARZANA MANAGEMENT COMPANY, LP DBA TARZANA
12 HEALTH AND REHABILITATION CENTER was, at the time of the filing of this
13 action, and still is, a corporation, incorporated under the laws of the State of
14 Delaware, having its principal place of business in the State of Delaware. SSC
15 TARZANA MANAGEMENT, GP LLC DBA TARZANA HEALTH AND
16 REHABILITATION CENTER was, at the time of the filing of this action, and still
17 is, a corporation, incorporated under the laws of the State of Delaware, having its
18 principal place of business in the State of Delaware.

19 5. This action is a civil action of which this Court has original jurisdiction
20 under 28 U.S.C. § 1332, and is one which may be removed to this Court by
21 defendant pursuant to the provisions of 28 U.S.C. §1441(b) in that it is a civil action
22 between citizens of different states and the matter in controversy exceeds the sum of
23 \$75,000, exclusive of interest and costs because plaintiff alleges that defendants
24 were negligent in the care of YELIZAVETA POPERECHNAYA resulting in her
25 sustaining a fall and a hip fracture. Plaintiff alleges that these acts caused or
26 contributed to YELIZAVETA POPERECHNAYA's death on November 14, 2013.
27 In addition to the claims for general and special damages, plaintiffs also seeks
28 attorney fees, treble damages, punitive damages, disgorgement of profits, and

1 restitution.

2 6. Therefore, complete diversity exists and removal is appropriate.

3 WHEREFORE, defendants SSC TARZANA MANAGEMENT COMPANY,
4 LP DBA TARZANA HEALTH AND REHABILITATION CENTER, a Delaware
5 corporation, and SSC TARZANA MANAGEMENT, GP LLC DBA TARZANA
6 HEALTH AND REHABILITATION CENTER, a Delaware corporation, file this
7 Notice of Removal of this action from the aforesaid Superior Court, in which it is
8 now pending, to the District Court of the United States for the Central District of
9 California - Western Division.

10

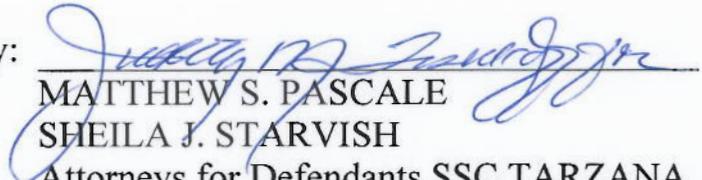
11 DATED: January 12, 2015

LEWIS BRISBOIS BISGAARD & SMITH LLP

12

13

14 By:


MATTHEW S. PASCALE
SHEILA J. STARVISH
Attorneys for Defendants SSC TARZANA
MANAGEMENT COMPANY, LP DBA
TARZANA HEALTH AND
REHABILITATION CENTER, a
Delaware corporation, and SSC
TARZANA MANAGEMENT, GP LLC
DBA TARZANA HEALTH AND
REHABILITATION CENTER, a
Delaware corporation

15

16

17

18

19

20

21

22

23

24

25

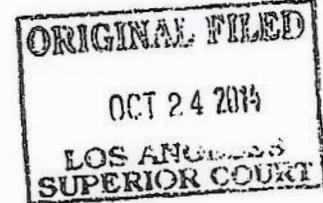
26

27

28

EXHIBIT “A”

1 Andrew J. Ellis, Esq. State Bar # 167091
2 Justina G. Ramon, Esq. State Bar #241239
3 ELLIS LAW CORPORATION
4 883 N. DOUGLAS STREET
5 EL SEGUNDO, CA 90245
6 Telephone: (310) 641-3335



5 Attorneys for Plaintiff
6 YELIZAVETA POPERECHNAYA
ZHANNA ZAGORUYKO

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES

9 YELIZAVETA POPERECHNAYA by and
10 through her personal/legal representative

) Case No.: L102280

11 ZHANNA ZAGORUYKO; ZHANNA
12 ZAGORUYKO, individually,

CIVIL COMPLAINT FOR DAMAGES

13 as Plaintiffs,

1. *Statutory Elder Abuse/Neglect*
2. *Violation of the Patient's Bill of Rights/*
Health & Safety Code §1430
3. *Negligence*
4. *Violation of Business and Professions*
Code §17200 - Unfair Business Practices
5. *Wrongful Death*

14 vs.

15 SSC TARZANA MANAGEMENT
16 COMPANY LP DBA TARZANA HEALTH
17 AND REHABILITATION CENTER, a
18 Delaware corporation, SSC TARZANA
19 MANAGEMENT GP LLC DBA TARZANA
HEALTH AND REHABILITATION
CENTER, a Delaware corporation, and DOES
1-100, inclusive,

20 as Defendants.

21 COMES NOW plaintiffs YELIZAVETA POPERECHNAYA by and through her
22 personal/legal representative ZHANNA ZAGORUYKO and ZHANNA ZAGORUYKO,
23 individually who respectfully alleges the following:

24 I.

GENERAL ALLEGATIONS

25 1. At the time when all of the wrongful tortious acts as alleged herein were committed
26 against her, precedent YELIZAVETA POPERECHNAYA was a resident patient of TARZANA
27 HEALTH AND REHABILITATION CENTER and was 80 years of age and thus an "elder" as that
28 term is defined under *Welfare and Institutions Code §15610.27*. Moreover, at the time when all

1 of the wrongful tortious acts as alleged herein were committed, decedent YELIZAVETA
2 POPERECHNAYA was under the direct custodial care, medical care and supervision of
3 defendants named herein. As a result of the neglectful and abusive care rendered to her by
4 defendants as pled more fully herein below, plaintiff YELIZAVETA POPERECHNAYA died on
5 November 14, 2013. Despite her death the legal claims belonging to YELIZAVETA
6 POPERECHNAYA are statutorily authorized to survive under the provisions of *Welfare &*
7 *Institutions Code §15657.3(d)*, and have been authorized to be maintained/pursued through her
8 daughter and Successor in Interest, ZHANNA ZAGORUYKO in the legal capacity as
9 personal/legal representative for decedent YELIZAVETA POPERECHNAYA.

10 2. At all time mentioned herein ZHANNA ZAGORUYKO was and still is, the adult
11 living daughter of YELIZAVETA POPERECHNAYA. Plaintiff ZHANNA ZAGORUYKO hereby
12 brings her own individual claims against defendants herein for the *Wrongful Death* of her mother.

13 3. At all times mentioned herein, defendants SSC TARZANA MANAGEMENT
14 COMPANY LP d/b/a TARZANA HEALTH AND REHABILITATION CENTER, and SSC
15 TARZANA MANAGEMENT GP LLC d/b/a TARZANA HEALTH AND REHABILITATION
16 CENTER as though each separate legal entities and thus named and sued herein separately, were
17 the owners/operators, and managing controllers of TARZANA HEALTH AND
18 REHABILITATION CENTER, ("THARC") located a 5650 Reseda Boulevard, Tarzana,
19 California; which is licensed to operate as a 24-hour *Skilled Nursing Facility* under the laws of the
20 State of California. For purposes of pleading, and unless referred to specifically by full name,
21 named defendants SSC TARZANA MANAGEMENT COMPANY LP d/b/a TARZANA
22 HEALTH AND REHABILITATION CENTER, and SSC TARZANA MANAGEMENT GP LLC
23 d/b/a TARZANA HEALTH AND REHABILITATION CENTER, will all hereinafter collectively
24 be referred to as "SSC TARZANA DEFENDANTS" and, when referring to the actual facility
alone, the term "THARC" will be used.

25 4. Upon information and belief, at all times mentioned herein, defendants DOE 1,
26 an individual, was the Director of Staff Development of THARC. As Director of Staff
27 Development of THARC, defendant DOE 1 was a managing agent of THARC, was personally
28 involved in running the day to day operations and running of the THARC, helped to set and

1 enforce staffing guidelines at THARC, and helped to set out and enforce all the policies and
2 procedures implemented and utilized at THARC.

3 5. Upon information and belief, at all times mentioned herein, defendant DOES 2
4 through 5, an individual, was a licensed vocational nurse of THARC. As a vocational nurse,
5 defendant DOES 2 through 5, was an agent of THARC, was personally involved in carrying out
6 the day to day operations of THARC and policies and procedures of THARC.

7 6. Defendants DOES 6 through 100, inclusive, are sued herein under fictitious names.
8 Their true names and capacities are unknown to plaintiffs. When their true names and capacities
9 are ascertained, plaintiffs will amend this complaint by inserting their true names and capacities.
10 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named
11 defendants is responsible in some manner for the occurrences herein alleged, and that plaintiffs'
12 damages were proximately caused by those defendants. Each reference in this complaint to
13 "defendant," "defendants," or a specifically named defendant refers to all named defendants and
 those sued under fictitious names.

14 At all times mentioned herein, defendants, and each of them, were responsible for
15 the care and custody of their patient, YELIZAVETA POPERECHNAYA, when each of the events
16 alleged herein occurred. Upon information and belief, it is alleged that the acts of defendants, their
17 officers, directors, key facility management, staff, agents and employees were a substantial factor
18 in causing various personal injury and death to plaintiff.

19 Plaintiff is informed and believes and thereon alleges that at all times material
20 hereto and mentioned herein, each defendant sued herein was the agent, servant, employer, joint
21 venturer, partner, owner, subsidiary, alias, and/or alter ego of each of the remaining defendants and
22 was, at all times, acting within the purpose and scope of such employment, agency, servitude,
23 ownership, subsidiary, alias and/or alter ego and with the authority, consent, approval, control,
24 influence, and ratification of each of the remaining defendants sued herein.

25 9. Venue is most proper in this jurisdiction in that the acts giving rise to this lawsuit,
26 which are described more fully below, occurred within this court's jurisdictional area.

II.

FACTS RELEVANT TO ALL CAUSES OF ACTION

1 10. On or about September 23, 2013, YELIZAVETA POPERECHNAYA was admitted
2 into THARC to receive long-term skilled nursing care. At the time of her admission into THARC,
3 defendants were aware that YELIZAVETA POPERECHNAYA required skilled nursing care as
4 she suffered from acute renal failure, diabetes mellitus, ovarian cancer and was in a debilitating
5 bed bound state. Defendants were further aware plaintiff YELIZAVETA POPERECHNAYA was
6 at high risk for infection, dehydration, weight loss and falls and thus required constant monitoring
7 of her health, safety, and well being, as well as, extensive assistance from staff for all activities of
8 daily living. Despite such knowledge, THARC failed to properly tend to YELIZAVETA
9 POPERECHNAYA's needs, failed to develop a plan of care, failed to adequately monitor
10 YELIZAVETA POPERECHNAYA's medical condition, and failed to implement doctors orders,
11 causing her to suffer a fall and acute right femoral fracture and infections and ultimately resulting
12 in the death of YELIZAVETA POPERECHNAYA.

13 11. At all relevant times while plaintiff was admitted to THARC, YELIZAVETA
14 POPERECHNAYA required assistance with her activities of daily living due to the above
15 described physical limitations. Specifically, plaintiff required assistance in moving to and from
16 her bed, as well as assistance in all activities of daily living. Nevertheless, THARC routinely
17 failed to adequately respond to YELIZAVETA POPERECHNAYA's requests for assistance to get
18 out of bed, and failed to properly monitor YELIZAVETA POPERECHNAYA and her physical
19 and mental condition, including but not limited to her whereabouts and status of her catheter and
colostomy.

20 12. On information and belief, YELIZAVETA POPERECHNAYA repeatedly begged
21 nursing staff to help her use the toilet but the staff would not help her and staff response time to
22 clean YELIZAVETA POPERECHNAYA ranged from twenty minutes to an hour, if the staff
23 responded to her call at all. More specifically, in the early morning on or about October 31, 2013,
24 YELIZAVETA POPERECHNAYA made numerous requests for assistance which were all but
25 ignored by SSTARZANA DEFENDANTS and Defendants employees DOES 1 through 5.
26 According to YELIZAVETA POPERECHNAYA attempted to ambulate alone. YELIZAVETA
27 POPERECHNAYA in her attempt to ambulate without assistance fell to the floor causing serious
28 injury to YELIZAVETA POPERECHNAYA's right lower extremity, including, but not limited to,

1 a fracture to her right femoral.

2 13. YELIZAVETA POPERECHNAYA's physical condition was not discovered by
3 THARC until it was brought to their attention by YELIZAVETA POPERECHNAYA's daughter
4 who came to visit her the evening of October 31, 2013. YELIZAVETA POPERECHNAYA was
5 then transported on November 1, 2013 to Providence Tarzana Medical Center where she
6 underwent closed reduction and intramedullary rodding of her right femur and subsequently
7 passed away on November 14, 2013 as a result of her right lower extremity injury.

8 14. Decedent YELIZAVETA POPERECHNAYA's right lower extremity fracture and
9 death was a result of defendants' reckless, neglectful, improper and conscious failures to protect
10 for her safety and well-being despite knowing she was at a high risk for falls and infection.
11 Indeed, plaintiff YELIZAVETA POPERECHNAYA's right lower extremity fracture, urinary tract
12 infection and death were a direct result of defendants' reckless, neglectful, and improper failure to
13 provide the care and attention that YELIZAVETA POPERECHNAYA was required to receive,
14 and paid to receive, in direct violation of the *California's Elder Abuse Act*, the *Patient's Bill of
15 Rights*, State and Federal laws that similarly govern skilled nursing facilities, as well as other
16 general tort principals as pled more fully below.

17 III.

18 CAUSES OF ACTION

19 First Cause of Action

20 *Statutory Elder Abuse; Violation of Welfare and Institutions Code §15600, et seq.*
21 *(Plaintiff YELIZAVETA POPERECHNAYA by and through her personal/legal representative*
22 *ZHANNA ZAGORUYKO vs. ALL DEFENDANTS and DOES 1-100)*

23 15. Plaintiff hereby incorporates by reference paragraphs 1 through 14 as though set
24 forth fully herein.

25 16. The SSC TARZANA DEFENDANTS, and DOES 1-100, and all of them, knew
26 that they had specific duties pursuant to Federal and State regulations and laws, to provide for the
27 care, comfort, welfare and safety of YELIZAVETA POPERECHNAYA, and knew that the health
28 and safety of YELIZAVETA POPERECHNAYA would be at great risk if they failed to carry out

1 such duties. Moreover, defendants specifically knew that their failure to comply with such duties
2 to provide proper care for YELIZAVETA POPERECHNAYA would result in serious personal
3 injury, severe emotional distress, and/or death.

4 17¹: In particular, and without limiting the generality of the foregoing, the SSC
5 TARZANA DEFENDANTS and DOES 1-100 recklessly, and with deliberate indifference and
6 conscious disregard for the health, safety, and well-being of YELIZAVETA POPERECHNAYA,
7 breached duties they owed to their patient YELIZAVETA POPERECHNAYA by:

8 Count 1 - failing to use reasonable care in transferring/transporting plaintiff from
9 her bed to other activities of daily living;

10 Count 2 - failing to implement specific care plan to meet the medical needs of
11 custodial patient YELIZAVETA POPERECHNAYA in preventing infection to develop;

12 Count 3 - failing to implement a protocol designed to prevent, diagnose, and treat
13 infections within the facility;

14 Count 4 - failing to timely diagnose and treat YELIZAVETA POPERECHNAYA's
15 right lower extremity fracture;

16 Count 5 - failing to communicate among the nursing disciplines, including physical
17 and occupational therapies, to ensure the best outcome for YELIZAVETA POPERECHNAYA;

18 Count 6 - failing to properly train and/or supervise its personnel, including, but not
19 limited to, how to properly assess and/or monitor the health conditions of its residents;

20 Count 7 - failing to timely notify a qualified physician of critical changes in
21 YELIZAVETA POPERECHNAYA's medical well-being;

22 Count 8 - failing to ensure that plaintiff YELIZAVETA POPERECHNAYA was
23 not subjected to acts of abuse, as that term is defined under *Welfare and Institutions Code*
24 §15610.07, while under the care of the SSC TARZANA DEFENDANTS and/or DOES 1-100;

25 Count 9 - failing to ensure that plaintiff YELIZAVETA POPERECHNAYA was
26 not subjected to acts of neglect, as that term is defined under *Welfare and Institutions Code*
27 §15610.57, while under the care of the SSC TARZANA DEFENDANTS and/or DOES 1-100;

Count 10 - allowing YELIZAVETA POPERECHNAYA to wander away from her bed without assistance.

Count 11 - failing to account for YELIZAVETA POPERECHNAYA at all times;

Count 12 - failing to protect YELIZAVETA POPERECHNAYA from health and safety hazards;

Count 13 - failing to provide a secure and safe environment; and

Count 14 - failing to care for YELIZAVETA POPERECHNAYA in a non-reckless manner.

18. Defendants' failures to care for plaintiff YELIZAVETA POPERECHNAYA in accord with State and Federal regulations that govern skilled care were reckless, abusive and neglectful in that the SSC TARZANA DEFENDANTS and/or DOES 1-100 knowingly failed to protect for the safety and well-being despite knowing that YELIZAVETA POPERECHNAYA was susceptible to falls and infection and at great risk if defendants did not provide compliant care. The wrongful acts of the SSC TARZANA DEFENDANTS and/or DOES 1-100, and specifically THARC, were reckless, abusive and neglectful in that defendants violated minimum standards of care as established under State and Federal law towards plaintiff YELIZAVETA POPERECHNAYA.

19. . . The numerous and specific acts of reckless abuse, neglect and willful misconduct as alleged herein against the SSC TARZANA DEFENDANTS and/or DOES 1-100 was actually committed by the SSC TARZANA DEFENDANTS , ratified by these same defendants, and/or ratified by these defendants' managing agents, including, but not limited to, Officers, Directors, Partners, Administrator, Director of Nursing, Director of Dietary, and/or Managing Agents of the SSC TARZANA DEFENDANTS including Defendants DOES 1 through 5.

20. As a direct and proximate result of defendants' reckless conduct as alleged above, YELIZAVETA POPERECHNAYA suffered serious personal injury and death and is thus entitled to damages in an amount to be proven at the time of trial but in no event less than the jurisdictional minimum of this court.

1 As a further result of defendants' reckless, malicious, and oppressive conduct,
2 YELIZAVETA POPERECHNAYA seeks statutory recovery of her costs against all defendants
3 and/or DOJ-S:1-100 in bringing this action, under *Welfare and Institutions Code §15657(a)*.

4 22! As a further result of defendants' reckless, malicious, and oppressive conduct,
5 YELIZAVITA POPERECHNAYA seeks an award of attorneys' fees against all defendants and/or
6 DOES 1-100 under *Welfare and Institutions Code §15657(a)*.

7 23: As a further direct and proximate result of defendants' reckless, malicious and
8 oppressive conduct which, as pled above, was done in conscious disregard for plaintiff's well-
9 being, YEI ZAVETA POPERECHNAYA is entitled to an award of punitive damages against
10 defendants and/or DOES 1-100 under Civil Code §3294, in an amount according to proof at trial.

Second Cause of Action

Violation of the Patient's Bill of Right/Health & Safety Code §1430

13 (Plaintiff "ELIZAVETA POPERECHNAY by and through her personal/legal representative
14 ZHANNA ZAGORUYKO vs. Licensee Defendants SSC TARZANA)

15 Plaintiff hereby incorporates by reference paragraphs 1 through 23 though set
16 forth fully herein.

17 25! As a patient and elder adult residing within defendant THRAC's skilled nursing
18 facility, SS' TARZANA DEFENDANTS, owed a duty to patient YELIZAVETA
19 POPERECHNAYA to protect her rights as a patient in compliance with specific Federal and State
20 regulations for the protection and benefit of patients like YELIZAVETA POPERECHNAYA,
21 including, but not limited to, *California Health and Safety Code §§1430, 1599-1599.4*, as well as
22 in *Title 22 of the California Code of Regulations*. As a licensed skilled nursing facility operating
23 in the State of California, and both under State and Federal regulations, SSC TARZANA
24 DEFENDANTS knew that the life, health, safety, and physical and emotional well-being of
25 YELIZAVETA POPERECHNAYA would be at great risk if they failed to do so.

25 26 27 28 YELIZAVETA POPERECHNAYA was specifically within the class of persons
that *California Health and Safety Code §1430* and the above referenced regulations, statutes,
and/or code sections were intended to protect.

1 27. The care rendered towards plaintiff YELIZAVETA POPERECHNAYA by SSC
2 TARZANA DEFENDANTS fell below the standard of care, and these breaches of *California*
3 *Health and Safety Code §1430*, as well as the above referenced regulations, statutes and/or code
4 sections, were done with disregard for the probability that serious personal injury and severe
5 emotional stress would result from their failure to carefully carry out and adhere to their duties.
6 SSC TARZANA DEFENDANTS knew or should have known that there was a probability that
7 patient YELIZAVETA POPERECHNAYA would suffer serious personal injury and severe
8 emotional stress from their failure to adhere to their statutory duties, including, but not limited
9 to, those duties referenced in the preceding paragraphs.

10 28. At all times mentioned herein, SSC TARZANA DEFENDANTS knew or should
11 have known of the existence of, and need to follow, State and Federal regulations, statutes, code
12 sections and laws relating to the protection of patient's rights, and knew that patient
13 YELIZAVETA POPERECHNAYA's health, safety, and well-being were at direct risk whenever
14 they failed to meet these duties. SSC TARZANA DEFENDANTS further knew that their failure
15 to comply with their duties would result in a violation of patients rights, serious personal injury,
16 and death which actually occurred.

17 29. SSC TARZANA DEFENDANTS did in fact violate *California Health and Safety*
18 *Code §1430* and the above referenced regulations, statutes and/or code sections. In particular, SSC
19 TARZANA DEFENDANTS breached the statutory duties they owed to YELIZAVETA
20 POPERECHNAYA and thereby violated YELIZAVETA POPERECHNAYA' *Patient's Bill of*
21 *Rights* by:

- 22 Count 1 - failing to use reasonable care in transferring/transporting plaintiff from
23 her bed to activities of daily living;
- 24 Count 2 - failing to implement specific care plan to meet the medical needs of
25 custodial patient YELIZAVETA POPERECHNAYA in preventing infection to develop;
- 26 Count 3 - failing to implement a protocol designed to prevent, diagnose, and treat
27 infections within the facility;

Count 4 - failing to timely diagnose and treat YELIZAVETA POPERECHNAYA's right lower extremity fracture;

Count 5 - failing to communicate among the nursing disciplines, including physical and occupational therapies, to ensure the best outcome for YELIZAVETA POPERECHNAYA;

Count 6 - failing to properly train and/or supervise its personnel, including, but not limited to, failing to properly assess and/or monitor the health conditions of its residents;

Count 7 - failing to timely notify a qualified physician of critical changes in YELIZAVETA POPERECHNAYA's medical well-being;

Count 8 - failing to ensure that plaintiff YELIZAVETA POPERECHNAYA was not subject to acts of abuse, as that term is defined under *Welfare and Institutions Code §15610.07*, while under the care of the SSC TARZANA DEFENDANTS and/or DOES 1-100;

Count 9 - failing to ensure that plaintiff YELIZAVETA POPERECHNAYA was not subjected to acts of neglect, as that term is defined under *Welfare and Institutions Code §15610.57*, while under the care of the **SSC TARZANA DEFENDANTS** and/or **DOES 1-100**;

Count 10 - allowing YELIZAVETA POPERECHNAYA to wander away from her bed without assistance.

- Count 11 - failing to account for YELIZAVETA POPERECHNAYA at all times;
- Count 12 - failing to protect YELIZAVETA POPERECHNAYA from health and safety hazards;

Count 13 - failing to provide a secure and safe environment; and

Count 14 - failing to care for YELIZAVETA POPERECHNAYA in a non-reckless manner.

30. The statutory violations of the SCC TARZANA DEFENDANTS as stated above were negligent in light of their failure to take action, despite recognizing that patient YELIZAVETA POPERECENAYA was at a substantial risk of suffering personal injury and/or death as a result of violating her patient rights.

31. As a direct and proximate result of defendants' negligent statutory violations as alleged above, YELIZAVETA POPERECHNAYA suffered serious personal injury and death and

1 is thus entitled to damages in an amount to be proven at the time of trial but in no event less than
2 the jurisdictional minimum of this court.

3 32. As a direct and proximate result of SCC TARZANA DEFENDANTS violation of
4 statutory rights conferred upon plaintiff YELIZAVETA POPERECHNAYA as set forth herein,
5 including specifically State and Federal regulations enacted to protect her as a skilled custodial
6 care patient plaintiff YELIZAVETA POPERECHNAYA is entitled to damages set forth under
7 *Health & Safety Code §1430*, in an amount according to proof after due proceedings, including but
8 not limited to damages, fines including, but not limited to, \$500.00 a day for each day a violation
9 was committed, attorney's fees, costs, and an order enjoining SCC TARZANA DEFENDANTS
10 from allowing the violations to continue.

11 Third Cause of Action

12 *Negligence*

13 (Plaintiff: YELIZAVETA POPERECHNAYA by and through her personal/legal representative
14 : ZHANNA ZAGORUYKO vs. ALL DEFENDANTS and DOES 1-100)

15 33. Plaintiffs hereby incorporate by reference paragraphs 1 through 32 as though set
16 forth fully herein.

17 34. Upon information and belief, all named defendants and/or DOES 1-100 acted
18 negligently with regard to YELIZAVETA POPERECHNAYA.

19 35. In specific, all named defendants and/or DOES 1-100 had a duty to use reasonable
20 care to protect YELIZAVETA POPERECHNAYA from health and safety hazards.

21 Notwithstanding, all named defendants and/or DOES 1-100 breached their respective duties by,
22 *inter alia*:

23 Count 1 - failing to use reasonable care in transferring/transporting plaintiff from
24 her bed to her activities of daily living;

25 Count 2 - failing to implement specific care plan to meet the medical needs of
26 custodial patient YELIZAVETA POPERECHNAYA in preventing infection to develop;

27 Count 3 - failing to implement a protocol designed to prevent, diagnose, and treat
28 infections within the facility;

Count 4 - failing to timely diagnose and treat YELIZAVETA POPERECHNAYA's right lower extremity fracture;

Count 5 - failing to communicate among the nursing disciplines, including physical and occupational therapies, to ensure the best outcome for YELIZAVETA POPERECHNAYA;

Count 6 - failing to properly train and/or supervise its personnel, including, but not limited to, how to properly assess and/or monitor the health conditions of its residents;

Count 7 - failing to timely notify a qualified physician of critical changes in YELIZAVETA POPERECHNAYA's medical well-being;

Count 8 - failing to ensure that plaintiff YELIZAVETA POPERECHNAYA was not subject to acts of abuse, as that term is defined under *Welfare and Institutions Code*

§15610.07. While under the care of the SSC TARZANA DEFENDANTS and/or DOES 1-100;
Count 9 - failing to ensure that plaintiff YELIZAVETA POPERECHNAYA was

not subject to acts of neglect, as that term is defined under *Welfare and Institutions Code* §15610.57, while under the care of the **SSC TARZANA DEFENDANTS** and/or **DOES 1-100**

Count 10 - allowing YELIZAVETA POPELKINA YA to wander away from her bed without assistance.

Count 11 - failing to account for YELIZAVETA POPERECHNAYA at all times;

Count 12 - failing to protect YELIZAVETA POPERECHNAYA from health and

Count 13 - failing to provide a secure and safe environment; and

Count 14 - failing to care for YELIZAVETA POPERECHNAYA in a non-reckless manner.

36. As a direct and proximate result of defendants' negligent conduct as alleged above, YELIZAVETA POPERECHNAYA suffered serious personal injury and death, and is thus entitled under law to recover certain limited damages for said negligent acts of defendants named herein, all in an amount according to proof at the time of trial.

Fourth Cause of Action

Violation of Business and Professions Code §17200 - Unfair Business Practices

1 (Plaintiff YELIZAVETA POPERECHNAY by and through her personal/legal representative
2 ZYANNA ZAGORUYKO vs. Defendants SSC TARZANA and DOES 1-100)

3 37. Plaintiffs hereby repeat, reallege, and incorporate by this reference, each and every
4 allegation contained in paragraphs 1 through 36 above as though set forth fully herein.

5 38. SSC TARZANA DEFENDANTS and/or DOES 1-100 are required to comply with
6 the provisions of *California Health and Safety Code §1430, Title 22 of the California Code of*
7 *Regulation, California's Elder Abuse Act, and the Business & Professions Code*, among other
8 laws and regulations. Despite such, THRAC and/or DOES 1-100 engaged in unlawful, unfair,
9 deceptive and/or fraudulent business practices in violation of *California Health and Safety Code*
10 *§1430, Title 22 of the California Code of Regulations, California's Elder Abuse Act, and the*
11 *Business & Professions Code*, among other laws and regulations.

12 39. More specifically, although defendant THRAC stated, conveyed, promoted,
13 advertised, or otherwise publicized that it would provide proper care in conformity with state and
14 federal law in order to lure the public, including elderly and dependent adults and/or their families
15 into entering into contractual agreements or remaining under contract with them, defendant
16 THRAC in fact did not comply with applicable state and federal regulations. In failing to comply
17 with such regulations, defendant THRAC obtained an unfair business advantage over consumers
18 and competitors, including YELIZAVETA POPERECHNAYA, and has wrongfully retained
19 benefits pursuant to contracts it entered into with residents under its care.

20 40. During a substantial period of time prior to and during which YELIZAVETA
21 POPERECHNAYA was admitted into THRAC, defendant knew that the care being rendered at
22 THRAC was inadequate, that the staff was undertrained, that the facility was understaffed, and that
23 the staff could not meet the needs of the residents, including YELIZAVETA POPERECHNAYA.
24 Despite such, defendant THRAC continued to state, convey, promote and/or advertise its services
25 to elderly and dependent adults in order to lure them into entering contractual agreements by
26 telling them that THRAC was a good facility that would take good care of its residents and protect
27 them from health and safety hazards.

1 41. The above acts and/or omissions of defendants, and each of them, constitute
2 unlawful, unfair, deceptive and/or fraudulent business acts pursuant to *Business & Professions*
3 *Code §17250*, which offend established public policy and/or are immoral, unethical, oppressive,
4 unscrupulous, and/or substantially injurious to its competitors and insureds.

5 42. Defendant THRAC engaged in said unlawful, unfair, deceptive and/or fraudulent
6 business acts to the detriment of its patients, competitors, and to members of the general public,
7 including elderly and dependent adults in need of adequate care and supervision.

8 43. As a proximate result of the above stated unlawful, unfair, deceptive and/or
9 fraudulent business acts as alleged herein above, defendant THRAC received contractual benefits
10 for providing substandard care to the public, including elderly and dependent adults at large as
11 well as YEVZAVETA POPERECHNAYA care that is less effective than what is standard in the
12 community and is being provided by defendant's competitors.

13 44. As a proximate result of the above stated acts, defendant THRAC has wrongfully
14 obtained and retained certain benefits to which it was/is not entitled.

15 45. Based upon defendant THRAC's unlawful, unfair, deceptive and/or fraudulent
16 business acts as alleged herein above, plaintiff seeks all authorized statutory, legal, and equitable
17 relief available under California law, including specifically:

18 a. Restitution of said contractual benefits which were wrongfully obtained and
19 retained by means of said unlawful, unfair, deceptive, and/or fraudulent business practices;

20 b. Disgorgement of all profits wrongfully obtained;

21 c. Treble damages pursuant to *Business & Professions Code §17082* and *Civil
Code §334*.

22 d. An injunction preventing all defendants named herein, including all
23 individually named defendants, from continuing to provide any care on behalf of elderly or
24 dependent adults in violation of California law;

25 e. Attorneys' fees as provided under *Business & Professions Code §17082*;

26 f. Costs incurred in this action; and

g. Any further relief that the court may deem just and equitable to ensure against defendant's continuing to engage in unlawful and/or unfair business practices.

FIFTH CAUSE OF ACTION

Wrongful Death - C.C.P. § 377.60

(Plaintiff ZHANNA ZAGORUYKO Against All Defendants and DOES 1-100)

46. Plaintiffs incorporate herein by reference, as though fully set forth at length, each and every allegation and statement contained in paragraphs 1 through 45, inclusive, of the General Assertions and the First, Second, Third, Fourth and Fifth Causes of Action above.

9 47. As alleged above, Plaintiff ZHANNA ZAGORUYKO is the adult living daughter
10 of decedent YELIZAVETA POPERECHNAYA.

11 48. Prior to YELIZAVETA POPERECHNAYA's death, plaintiff ZHANNA
12 ZAGORUYKO were dependent on their mother, YELIZAVETA POPERECHNAYA for love,
13 care, comfort, society, emotional support and guidance. YELIZAVETA POPERECHNAYA was a
14 product and doting and dutiful mother, and provided much love, care comfort, society and
15 emotional support and guidance to her daughter ZHANNA ZAGORUYKO. They had an extremely
16 close and loving relationship.

17 49. Plaintiff ZHANNA ZAGORUYKO is informed and believe and thereon allege that
18 as a result of tortious acts committed by SSC TARZANA DEFENDANTS and/or DOES 1 through
19 100 as alleged more fully in detail herein above, YELIZAVETA POPERECHNAYA died on
20 November 1, 2013.

21 50. As a direct, proximate and legal result of the aforementioned acts, omissions,
22 carelessness, malfeasance, nonfeasance, despicable conduct and conscious disregard by all
23 defendants, and each of them, decedent YELIZAVETA POPERECHNAYA's heirs and estate, and
24 all of them, have sustained pecuniary damages resulting from loss of love, society, comfort,
25 companionship; attention, services, solace, moral and financial support of decedent G
26 YELIZAVETA POPERECHNAYA in an amount exceeding the jurisdictional limit of this Court
and subject to proof at trial.

1 WHEREFORE based on the allegations as set forth above, plaintiff YELIZAVETA
2 POPEREC; NAYA and ZHANNA ZAGORUYKO pray that judgment be entered in their favor
3 against all CSC TARZANA DEFENDANTS, and/or DOES 1-100, as follows:

4 1. On each and every cause of action, for all legally recoverable compensatory special,
5 consequential and related damages, in an amount according to proof at trial;

6 2. For costs of litigation pursuant to *Welfare & Institutions Code §15657(a)*, as to all
7 applicable causes of action, in an amount according to proof after due proceedings;

8 3. For attorneys' fees pursuant to *Welfare and Institutions Code §15657(a)*, as to
9 applicable causes of action, in an amount according to proof after due proceedings;

10 4. For punitive damages pursuant to *Civil Code §3294*, as to all applicable causes of
11 action pled herein, in an amount according to proof at trial;

12 5. For all remedies available for defendants violation of *Health & Safety Code §1430*,
13 in an amount according to proof, including but not limited to damages, fines of \$500.00 a day, per
14 day, for each day a violation was committed, as well as attorney's fees costs, and an order
15 enjoining defendants from allowing the violations to continue, all upon determination of all due
16 proceedings held in this matter;

17 6. On surviving plaintiff's ZHANNA ZAGORUYKO individually pled claim as stated
18 within the fifth cause of action for any and all tortious acts that caused or contributed to causing
19 the Wrongful Death of YELIZAVETA POPERECHNAYA and specifically for damages incurred
20 by this plaintiff in respect to the loss of care, comfort and society of their mother, YELIZAVETA
21 POPEREC; NAYA all in an amount according to proof at trial of this matter.

22 7. On all such relief as requested within plaintiff's *Fourth Cause of Action for
Violation of Business and Professions Code §17200* against defendant THRAC and/or DOES 1-
23 100, including specifically:

24 a. Restitution of said contractual benefits which were wrongfully obtained and
25 retained by means of said unlawful, unfair, deceptive, and/or fraudulent business practices;

26 b. Treble damages pursuant to *Business & Professions Code §17082* and *Civil
Code §3343*;

1 c. Reasonable attorneys' fees as provided under *Business & Professions Code*
2 §17082;

3 d. Costs incurred in this action;

4 e. Disgorgement of all profits wrongfully obtained;

5 f. Punitive damages as authorized under *Civil Code* §3294, in an amount

6 according to proof at trial; and

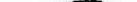
9 8. For interest at the legal rate permitted by law;

9. For costs of suit incurred herein; and

10: For all other relief that the court deems just and proper.

3 | Date: October 22, 2014

ELLIS LAW CORPORATION

By: 

Andrew L. Ellis

✓ Justina G. Ramon

for Plaintiff YELIZAVETA POPERECHNAYA

1 Andrew L. Ellis, Esq. State Bar # 167091
2 Justina G. Ramon, Esq. State Bar #241239
3 ELLIS LAW CORPORATION
4 883 N. DOUGLAS STREET
5 EL SEGUNDO, CA 90245
6 Telephone: (310) 641-333

7 Attorney for Plaintiffs
8 YELIZAVETA POPERECHNAYA
9 ZHANNA ZAGORUYKO

ORIGINAL FILED
OCT 24 2014
LOS ANGELES
SUPERIOR COURT

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN THE COUNTY OF LOS ANGELES

12 YELIZAVETA POPERECHNAYA by and
13 through her personal/legal representative
14 ZHANNA ZAGORUYKO; ZHANNA
15 ZAGORUYKO, individually,

16 CASE NO. LC102280

17 DECLARATION OF ZHANNA
18 ZAGORUYKO

19 as Plaintiffs,

20 vs.

21 SSC TARZANA MANAGEMENT
22 COMPANY LTD DBA TARZANA HEALTH
23 AND REHABILITATION CENTER, a
24 Delaware corporation, SSC TARZANA
25 MANAGEMENT GP LLC DBA TARZANA
26 HEALTH AND REHABILITATION
27 CENTER, a Delaware corporation, and
28 DOES 1-100, inclusive,

1 as Defendants.

2 I, ZHANNA ZAGORUYKO, declare as follows:

3 1. I am the daughter of decedent Yelizaveta Poperechnaya and I have personal
4 knowledge

5 of the facts stated herein. If called upon as a witness in this case, I could and would competently
6 testify thereto.

7 2. On November 14, 2013, Yelizaveta Poperechnaya, a decedent in this action, passed
8 away a result of a hip fracture caused by defendant's failure to properly supervise its resident. The
9 incident occurred at the skilled nursing facility of Tarzana Health and Rehabilitation located at 5650

10 DECLARATION OF ZHANNA ZAGORUYKO

1 Reseda Boulevard, Tarzana, California. [Attached as Exhibit "A" is a certified copy of decedent
2 Yelizaveta Poperechnaya's certified death certificate].

3 3. As a result of Yelizaveta Poperechnaya's death, this civil action has been filed
4 against SSC TARZANA MANAGEMENT COMPANY LP d/b/a TARZANA HEALTH AND
5 REHABILITATION CENTER and SSC TARZANA MANAGEMENT GP LLC d/b/a TARZANA
6 HEALTH AND REHABILITATION CENTER, on behalf of plaintiffs Yelizaveta Poperechnaya
7 (decedent), and myself.

8 4. No proceeding is now pending in California for administration of the decedent
9 Yelizaveta Poperechnaya's estate. The decedent's estate has not been and will not be administered
10 in California.

11 5. I am decedent Yelizaveta Poperechnaya's successor in interest and succeed to
12 decedent (as defined in Code of Civil Procedure Section 377.11) and succeed to the decedent's
13 interest in this action.

14 6. No other person, other than myself, has a superior right to be substituted for the
15 decedent in the pending action. At the time of decedent Yelizaveta Poperechnaya's death, she was
16 80-years old.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct.

19 Executed this 23 day of October, 2014, in El Segundo, California.


ZHANNA ZAGORUYKO

EXHIBIT “B”

Zilopmu
11/7/14

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: SSC TARZANA MANAGEMENT COMPANY LP
(AVISO AL DEMANDADO): DBA TARZANA HEALTH AND
REHABILITATION CENTER, a Delaware corporation, SSC
TARZANA MANAGEMENT GP LLC DBA TARZANA HEALTH AND
REHABILITATION CENTER, a Delaware corporation, and
DOES 1-100, incl sive,

YOU ARE BEING SUED BY PLAINTIFF: YELIZAVETA POPERECHNAYA
(*LO ESTÁ DEMANDANDO EL DEMANDANTE*); by and through her
personal/legal representative ZHANNA ZAGORUYKO;
ZHANNA ZAGORUYKO individually,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR days after this summons and legal papers are served on you to file a written response at this court and have a copy or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your side that you can use for your response. You can find these court forms and more information at the California Courts website (www.courtinfo.ca.gov/seithelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further notice.

There are other legal referral services. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seh) or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and an award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Hay otros requisitos legales para la remisión a abogados. Si no tiene un programa de servicios legales (www.lawhelpcalifornia.org), colegio de abogados local, cualquier recuperación de \$ 300 o más debe ser pagada al abogado de la corte.

Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de \$ 0 pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un grupo sin fines de lucro. Puede encontrar estos grupos en el sitio web de California Legal Services, el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el VAGO. Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre \$ 300 o más de valor recibido mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que antes de que la corte pueda deschar el caso.

The name and address of
(El nombre y dirección de)
LOS ANGELES SUPE
6230 Sylmar Ave.
same

Van Nuys, CA 91401
The name, address, and
(El nombre, la dirección)
ANDREW L. ELLIS,
ELLIS LAW CORPOR.
883 N. DOUGLAS
EL SEGUNDO, CA
DATE:
(Fecha)

(For proof of service of this
(Para prueba de entrega de

THE PROBLEMS OF THE STATE

CASE NUMBER:
(Número del Caso):

LC102280

Expediente (Secretario) (Adjunto)

(Ifmons, use Proof of Service of Summons (form POS-010).)

(310) 641-3335

Clerk, by _____, Deputy
(Secretario) _____, Deputy
(Adjunto)

(SEAL)

1. by personal delivery on (date):

2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **SSC Tarzana Management Company LP D**
 under: CCP 416.10 (corporation) CCP 416.60 (minor) **Tarzana Health and Rehabilitation Center, a Del**
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee) **corp**
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):

